

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DAVID BAIER and MAUREEN
BAIER,

Plaintiffs,

vs.

FORD MOTOR COMPANY,

Defendant.

No. C04-2039

ORDER

This matter comes before the court pursuant to the defendant's February 4, 2005, motion for summary judgment (docket number 20). The parties have consented to the exercise of jurisdiction by a United States Magistrate Judge (docket number 13). For the reasons set forth below, the defendant's motion is denied.

Statement of Material Facts Taken in a Light Most Favorable to the Plaintiff

On July 6, 2003, David Baier was driving on U.S. Highway 218 through Bremer County, Iowa. Mr. Baier was driving a 1967 Ford Mustang that he had acquired in 1988. As he was driving, Mr. Baier's Mustang was struck from behind by another car. Mr. Baier did not sustain any injuries from the actual impact of the collision.

However, the collision was sufficient to rupture the gas tank in Mr. Baier's Mustang. The gas tank was located underneath the trunk of the car. Classic Mustangs, such as the one Mr. Baier was driving, have what is commonly called a "drop-in" gas tank. A "drop-in" gas tank is placed in the car so that the top of the gas tank forms the bottom of the trunk. In other words, there is one layer of metal between the gas and the trunk and the gas tank is part of the structure of the car. By contrast, a "strap-on" gas tank, which is the much more common form of tank, is attached to the bottom of the trunk

so that there are two layers of metal between the gas and the trunk and the tank is not part of the structure of the car. When the tank ruptured, fuel escaped into the trunk of Mr. Baier's car.

The collision between the Mustang and the second car was also sufficient to dislodge the rear seat of the Mustang. This created a channel between the trunk and the passenger compartment of the car because the rear seat back was the only barrier between the trunk and the passenger compartment. This channel allowed fuel to get from the trunk into the passenger compartment. The fuel ignited, causing a fireball to form inside the Mustang while Mr. Baier was inside the vehicle. He was able to escape the vehicle but suffered third degree burns across 40% of his body. The time between the collision, the formation of the fire, and Mr. Baier's escape from the car was only a matter of seconds.

In 1966, before the production of Mr. Baier's Mustang, the defendant conducted Crash Test 301. This crash test was performed on a Ford Mustang very similar to Mr. Baier's Mustang. The test revealed that, upon a rear-end collision, the gas tank would rupture and allow fuel to escape into the trunk and passenger compartment of the car. Later in 1966, the defendant conducted Crash Test 425 on the Mustang in order to determine if the car met a rear-end crash standard set by the federal government. However, the Mustang used in this crash test was modified to strengthen the frame of the car in such a way that the gas tank was more resistant to damage than in a regular, production Mustang. The defendant reported that the car tested in Crash Test 425 passed the federal standard; however, the report did not mention or reference the modifications done to the frame of the car.

In the late 1960s the National Highway Traffic Safety Administration (NHTSA) began an investigation into the safety of Ford's "drop-in" gas tank line of vehicles. In the course of this investigation, NHTSA requested that Ford produce reports of all crash tests regarding rear-end collisions and other information regarding the drop-in gas tank line of cars. In responding to this request, Ford did not produce any report regarding

Crash Test 301 or a report produced by Ford's Automotive Safety Office regarding the dangers of "drop-in" gas tanks. The NHTSA investigation was closed in 1976 and concluded that the "drop-in" gas tank line of vehicles did not pose any unreasonable safety risk. Since that time, Ford has continued to state that the Classic Mustang is a safe vehicle and that the "drop-in" gas tank does not pose a significant safety risk and that modifications to the car, including the installation of a barrier between the trunk and the passenger compartment, are not needed.

Summary Judgment Standard

A motion for summary judgment may be granted only if, after examining all of the evidence in the light most favorable to the nonmoving party, the court finds that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. Kegel v. Runnels, 793 F.2d 924, 926 (8th Cir. 1986). Once the movant has properly supported its motion, the nonmovant "may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). "To preclude the entry of summary judgment, the nonmovant must show that, on an element essential to [its] case and on which it will bear the burden of proof at trial, there are genuine issues of material fact." Noll v. Petrovsky, 828 F.2d 461, 462 (8th Cir. 1987) (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Although "direct proof is not required to create a jury question, . . . to avoid summary judgment, 'the facts and circumstances relied upon must attain the dignity of substantial evidence and must not be such as merely to create a suspicion.'" Metge v. Baehler, 762 F.2d 621, 625 (8th Cir. 1985) (quoting Impro Prod., Inc. v. Herrick, 715 F.2d 1267, 1272 (8th Cir. 1983)). The nonmoving party is entitled to all reasonable inferences that can be drawn from the evidence without resort to speculation. Sprenger v. Fed. Home Loan Bank of Des Moines, 253 F.3d 1106, 1110 (8th Cir. 2001). The mere existence of a scintilla of evidence in support of the plaintiff's position will be

insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. Id.

CONCLUSIONS OF LAW

Iowa Code § 614.1(2A)

The defendant moves for summary judgment on the plaintiffs' claims arguing that the action is barred by Iowa's Statute of Repose. This code section creates a period of time in which the consumer of a product may sue the manufacturer of the product for liability arising from that product, after which time such a suit is barred.

Those [claims] founded on . . . injuries to the person . . . brought against the manufacturer . . . of a product based upon an alleged defect in the design, inspection, testing, manufacturing . . . or any other alleged defect or failure of whatever nature or kind, based on the theories of strict liability in tort, negligence, or breach of an implied warranty shall not be commenced more than fifteen years after the product was first purchased . . . unless expressly warranted for a longer period of time by the manufacturer.

I.C.A. § 614.1(2A)(a). A statute of repose runs from the time the product is first purchased and not from the time harm is first suffered. In other words, "a statute of limitations runs from the accrual of a cause of action, whereas a statute of repose runs from a different, earlier date." Albrecht v. General Motors Corporation, 648 N.W.2d 87, 90 (Iowa 2002). I.C.A. § 614.1(2A) is "clearly [a] statute[] of repose." Id. at 92.

The plaintiffs do not dispute that their claims fall within the ambit of this statute of repose. Rather, they argue that their claims are allowed by an exception provided for in the statute. "This subsection shall not apply if the manufacturer . . . of the product intentionally misrepresents facts about the product or fraudulently conceals information about the product and that conduct was a substantial cause of the claimant's harm." I.C.A. § 614.1(2A)(a). The plaintiffs argue that the defendant intentionally misrepresented and fraudulently concealed information regarding the 1967 Ford Mustang and the safety of its fuel system and that this conduct was a substantial cause of the injuries sustained by

Mr. Baier. Therefore, according to the plaintiffs, I.C.A. § 614.1(2A) does not apply to their claims and the defendant is not entitled to summary judgment.

Fraudulent Concealment and Intentional Misrepresentation

The plaintiffs contend that Ford fraudulently concealed information about the '67 Mustang by not responding truthfully and completely to the NHTSA's investigation into Ford's "drop-in" tank line of cars. The plaintiffs argue that Ford "corrupted the investigation" and then concealed this corruption from both NHTSA and the public. The plaintiff further contends that the defendant intentionally misrepresented facts about the Mustang to NHTSA and to owners of Classic Mustangs and, therefore, the defendant is not entitled to the protection provided by Iowa's statute of repose. Specifically, the plaintiffs argue that the defendant intentionally misrepresented facts to NHTSA in three ways: first, by misrepresenting the results and significance of Crash Test 425; second, by withholding data and reports from NHTSA; and, third, by withholding the report of Crash Test 301 and other crash tests. The plaintiffs also argue that the defendant intentionally misrepresented facts to the owners of Classic Mustangs in two ways: first, by stating that the Mustang was exonerated in a federal investigation when the defendant knew that the investigation had been corrupted; and, second, by telling car owners that they need not install a barrier between the trunk and passenger compartment because such a barrier was not needed when, in fact, the defendant had not tested the barrier and knew that a test had proved the barrier's effectiveness.

The defendant makes three arguments in response to the plaintiffs. First, the defendant argues that the plaintiffs' fraud claim is pre-empted by federal law. Second, the defendant argues that there is no evidence that the plaintiff relied on Ford's allegedly fraudulent conduct. Third, the defendant argues that there is no evidence that it had an intent to cause the plaintiffs' claims to be time barred and, therefore, committed no fraud.

Iowa law states that the fifteen year statute of repose on product liability suits "shall not apply if the manufacturer . . . fraudulently conceals information about the product."

I.C.A. § 614.1(2A)(a).¹ The code, however, does not define fraudulent concealment, nor has there been any Iowa case law defining the phrase in the context of I.C.A. § 614.1(2A)(a). However, fraudulent concealment is also a common law exception to Iowa statutes of limitations and has been applied in that context.

The Iowa Supreme Court has determined that fraudulent concealment can toll a statute of limitations where one party has a cause of action against a second party but that second party, by fraud or fraudulent concealment, prevented the first party from obtaining knowledge of the cause of action. McClendon v. Beck, 569 N.W.2d 382, 385 (Iowa 1997). Because this statement of the doctrine of fraudulent concealment is made in the context of statutes of limitations it focuses on the concealment of a cause of action. However, in the present case, it is not the concealment of a cause of action that is at issue; the plaintiffs had no cause of action until the accident and the defendant did not act in any way to conceal this cause of action. Instead, the issue in the statute of repose context is whether the defendant “fraudulently conceal[ed] information about the product” that allegedly gives rise to their liability. I.C.A. § 614.1(2A).

The doctrine of fraudulent concealment in the statute of limitations context is a form of equitable estoppel. Christy v. Miulli, 692 N.W.2d 694, 701 (Iowa 2005). “Equitable estoppel prevents a defendant ‘from asserting the bar of the statute of limitations’ based on ‘his agreement, misrepresentations, or conduct.’” Id. (quoting DeWall v. Prentice, 224 N.W.2d 428, 430 (Iowa 1974)). Specifically, for the fraudulent concealment exception to apply, “[t]here must be conduct amounting to false representation or concealment, and a party relying thereon must be misled into doing or failing to do something.” Id. (quotation omitted).

¹Because the court finds that there is a genuine issue of material fact as to whether Ford fraudulently concealed information about the Mustang and, therefore, summary judgment is not appropriate, the court need not determine whether there is a genuine issue of material fact with respect to the plaintiffs’ claims of intentional misrepresentation.

The foundational elements of equitable estoppel are well established: (1) The defendant has made a false representation or has concealed material facts; (2) the plaintiff lacks true knowledge of the facts; (3) the defendant intended the plaintiff to act upon such representations; and (4) the plaintiff did in fact rely upon such representations to his prejudice.

Id. at 702. (quotation omitted).

To prove the first element of equitable estoppel/fraudulent concealment, the plaintiff must prove either (1) “that the defendant affirmatively concealed the facts” or (2) “a confidential or fiduciary relationship exists between the person concealing” the facts and “the aggrieved party.” McClendon, 569 N.W.2d at 385 (quotations omitted). In the present case, the plaintiffs rely on the first option, proving that Ford affirmatively concealed facts about the Mustang. Taken in the light most favorable to the plaintiffs, there is sufficient evidence for a jury to find that Ford did conceal facts about the Mustang and, therefore, there is a genuine issue of material fact.

The plaintiffs have produced evidence indicating that Ford knew of the alleged defects in the design and manufacture of the Mustang’s fuel system and that Ford withheld this information from NHTSA. Specifically, the plaintiffs have produced evidence that Crash Test 301 indicated that the drop-in gas tank in the Mustang could rupture if the car was struck from behind. The plaintiffs have also produced documents prepared by Ford employees indicating that Ford had knowledge of problems with the drop-in gas tank. There is a report from a member of Ford’s Safety Engineering staff stating that the drop-in gas tank is undesirable because a fuel tank rupture could lead to gasoline getting into the car and, therefore, the tank should be relocated or a barrier installed. Furthermore, minutes of a September 12, 1967, meeting indicate that Ford knew that the drop-in gas tank was more likely to burst than Chevrolet fuel tanks. Giving all reasonable inferences that can be drawn from the evidence to the plaintiffs, it appears that these documents were requested by NHTSA during its investigation of the drop-in gas tank line of vehicles but that Ford did not disclose any of these document. In other words, taking the evidence in

the light most favorable to the plaintiffs, there is a genuine issue of material fact as to whether Ford concealed facts about the Ford Mustang and, therefore, whether Ford committed fraudulent concealment.

Reliance

The defendant argues that the plaintiffs' have produced no evidence that Ford's alleged fraudulent conduct was relied upon by either the plaintiffs or by NHTSA. According to the defendant, the plaintiffs can not establish reliance upon Ford's alleged acts of concealment and, therefore, the plaintiffs can not establish a claim of fraudulent concealment. The plaintiffs argue that, under Iowa law, there is sufficient evidence to establish their reliance upon Ford's fraudulent conduct and, therefore, summary judgment is not appropriate.

The defendant argues that the plaintiffs must show actual reliance on a party's misrepresentations in order to establish fraudulent concealment. According to the defendant, in order to establish fraud, the plaintiffs must produce evidence that shows that NHTSA actually relied upon the defendant's alleged misrepresentation and that the plaintiffs actually relied upon the government's action based upon the defendant's alleged misrepresentation. The defendant cites a California case, Gawara v. United States Brass Corp., 63 Cal.App.4th 1341 (California 1998), in support of its argument. The defendant argues that, in this case, the plaintiffs can not satisfy this actual reliance standard because there is no reliable evidence that NHTSA would have acted any differently with regards to the Mustang than it did with Ford's alleged misrepresentations. According to the defendant, the decision making process in NHTSA is too complex to determine whether, absent Ford's alleged misrepresentations, NHTSA would have made a different decision by, for example, issuing a mandatory recall. Furthermore, contends the defendant, there is also no evidence that the plaintiffs relied upon NHTSA's actions with regards to the Mustang.

The plaintiffs, however, contend that under Iowa law, they have produced sufficient evidence to demonstrate their reliance upon Ford's allegedly fraudulent acts to avoid summary judgment. In support of their argument, the plaintiffs cite Clark v. McDaniel, 546 N.W.2d 590 (Iowa 1996). In Clark, the Iowa Supreme Court held that a buyer of a car from a third party could justifiably rely on misrepresentations made by the original seller of the car who sold the vehicle to the third party. Clark, 546 N.W.2d at 593-94. The court reasoned that the original seller had reason to expect that its misrepresentations to the third party would be passed on when the third party sold the car. Id. Therefore, the buyer could hold the original seller liable for fraud. Id. Furthermore, "what is really important is that the [fraudulent misrepresentations] were made for the purpose of influencing the action of another," even if those misrepresentations were not made directly to the other party. Wright v. Brooke Group Ltd., 652 N.W.2d 159, 176 (Iowa 2002).

The plaintiffs in the present case argue that, just as the buyer in Clark, they could justifiably rely upon the alleged misrepresentations made by Ford to a third-party, in this case NHTSA. The plaintiffs argue that Ford had reason to expect that its misrepresentations made to NHTSA would be passed on to a third party and that these misrepresentations were made with the purpose of influencing the actions of another. Taking the evidence in the light most favorable to the plaintiffs, there is a genuine issue of material fact as to whether the plaintiffs relied on the allegedly fraudulent conduct. The plaintiffs presented evidence from a former employee of NHTSA that, had Ford not engaged in the allegedly fraudulent conduct, NHTSA's investigation of the drop-in gas tanks would not have been closed. Therefore, there is evidence that NHTSA relied upon Ford's alleged misrepresentations. Furthermore, Mr. Baier stated in an affidavit that, had he known about the alleged defects in the Mustang, which, according to the plaintiffs, would have occurred had Ford not made misrepresentations to NHTSA, he would not have driven a '67 Mustang. Therefore, there is sufficient evidence for a jury to determine that

the plaintiffs relied upon Ford's alleged misrepresentations and there is a genuine issue of material fact.

Intent

The defendant also argues that the exception to the statute of repose is not applicable because the plaintiffs can not prove that the allegedly fraudulent acts were done with the intent to lead the plaintiffs into the trap of the time bar. According to the defendant, in order for the fraudulent concealment exception to apply, the plaintiffs have to prove that the defendant intended to lead the plaintiffs into the trap of the time bar. The defendant relies on the language from an Iowa case that states that for the doctrine of repair estoppel² to apply, the "repairs and assertions [must have been] made to conceal the true condition of the product, [and] with the intent to mislead the injured party into the trap of the time bar." Meier v. Alfa-Laval, Inc., 454 N.W.2d 576, 580 (Iowa 1990). However, the Meier language applies to the limited context of repair estoppel for statute of limitations and does not control with respect to the exception to the statute of repose.

Instead, the intent element for equitable estoppel and fraudulent concealment is "the defendant intended the plaintiff to act upon such [false] representations." Christy, 692 N.W.2d at 702. Under Iowa law, fraudulent concealment claims require an intent to deceive. Wright, 114 F. Supp.2d at 819. In the statute of limitations context, for there to be a fraudulent concealment exception to the time bar, this intent to deceive is the intent to mislead the plaintiff into the trap of the time bar. However, in the statute of repose context, the fraudulent concealment does not involve concealing a cause of action, but involves concealing information about a product. Therefore, the relevant inquiry is not whether the defendant intended to deceive the plaintiffs with respect to a time bar, but

²The doctrine of repair estoppel "is an offshoot of the doctrine of equitable estoppel." Meier, 454 N.W.2d at 579. Essentially, repair estoppel prevents a dealer of a product, after the purchaser has discovered a defect in the product, from making repairs on the product, that do not actually solve the problem, while having the intent to mislead the purchaser into the trap of the statute of limitations. See Id.

whether the defendant intended to deceive the plaintiffs with respect to the product. The plaintiffs have produced sufficient evidence, as detailed above, to create a genuine issue of material fact as to whether Ford engaged in fraudulent conduct. This evidence also creates a genuine issue of fact as to whether Ford intended to deceive the plaintiffs, as potential purchasers and then as users of the car, about the Ford Mustang. Therefore, summary judgment is not appropriate.

Substantially Caused

The fraudulent concealment exception to the statute of repose also requires that the defendant's fraudulent conduct be a substantial cause of the plaintiffs' harm. I.C.A. § 614.1(2A). The plaintiffs argue that the defendant's conduct was a substantial cause of their harm because, had Ford not committed fraud or misrepresentation, NHTSA would not have closed its investigation and Mr. Baier would not have been driving the Mustang had he known of the alleged defects. To support its argument, the plaintiffs have presented evidence in the form of the prior testimony of a former employee of NHTSA stating that, had Ford not concealed information, NHTSA's investigation would not have been closed. Further, the plaintiffs have presented the affidavit of Mr. Baier stating that, had he known of the alleged defects of his '67 Mustang, he would not have been driving the car. Such evidence is sufficient to create a genuine issue of material fact as to whether Ford's allegedly fraudulent conduct substantially caused the plaintiffs' harm, especially since, in Iowa, questions of causation are for the jury. Rowson v. Kawasaki Heavy Industries, Ltd., 866 F. Supp. 1221, 1238 (N.D. Iowa. 1994) (citing Nichols v. Westfield Indus., Ltd., 380 N.W.2d 392 (Iowa 1985)).

Preemption

The defendant argues that, even if there is sufficient evidence to find a genuine issue of material fact as to whether Ford fraudulently concealed information about the Mustang from NHTSA, this fraudulent concealment does not prevent the application of Iowa's statute of repose to the plaintiffs' claims. Ford argues that the plaintiffs' attempt to use

Ford's alleged fraudulent concealment of information from NHTSA to avoid the state statute of repose is unavailing because it is preempted by federal law. Specifically, the defendant argues that Buckman Co. v. Plaintiffs' Legal Comm., 531 U.S. 341 (2001), governs in the present case. The plaintiffs argue that Buckman is inapplicable to the present case and that the fraudulent concealment claim is not preempted by federal law. This court agrees with the plaintiffs for the following reasons.

The United States Supreme Court has held that state-law fraud-on-the-FDA claims conflicts with and, therefore, are impliedly preempted by federal law. Buckman, 531 U.S. at 348. In Buckman, various individuals brought claims of fraud, under state law, against Buckman Company, claiming that Buckman had made fraudulent representations to the Food and Drug Administration (FDA) in the course of obtaining approval to market orthopedic bone screws. Id. at 343. In other words, the claimants in Buckman sought to hold the defendant liable for fraud it had committed on the FDA. The Court stated that “[p]olicing fraud against federal agencies is hardly ‘a field which the States have traditionally occupied.’” Id. at 347 (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). Furthermore, the “federal statutory scheme amply empowers the FDA to punish and deter fraud against the Administration.” Id. at 348. Therefore, “[s]tate-law fraud-on-the-FDA claims inevitably conflict with the FDA’s responsibility to police fraud consistently with the Administration’s judgment and objectives.” Id. at 350. The Court also distinguished Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984)³, because the plaintiff’s claim in that case “was not based on any sort of fraud-on-the-agency theory, but on traditional state tort law principles.” Buckman, 531 U.S. at 351-52. Essentially, the Court in Buckman held that individuals could not hold companies liable for fraud

³In Silkwood, the plaintiff claimed that the defendant had violated state law tort principles of the duty of care owed by the producer of plutonium fuel pins to an employee at its plant. Silkwood, 464 U.S. at 241.

committed against the FDA because the FDA could adequately police itself and punish any fraud it suffered.

Buckman does not apply in the present case. In this case, the plaintiffs' are not seeking to hold Ford liable for fraud alleged to have been perpetrated against a federal agency. Rather, the plaintiffs' are attempting to hold Ford liable for alleged defects in the manufacture of a product, an area which state law has traditionally occupied. The allegedly fraudulent concealment committed by Ford only arises in the present case as an attempt to get past a bar on the plaintiffs' tort claims. Buckman prohibits a plaintiff from bringing a state-law fraud cause of action against a defendant based on fraud committed against a federal agency. The fraud "claim" in this case is not a cause of action, but rather is an exception to a statute of repose. The plaintiffs are not seeking to punish the defendant for fraud committed against a federal agency, but are seeking to hold Ford responsible for alleged defects in the design and manufacture of a car. Therefore, Buckman does not apply and the plaintiffs' claim of fraudulent concealment, to avoid Iowa's statute of repose, is not preempted by federal law.

Furthermore, there is no evidence that Congress intended to impliedly preempt product liability claims of the type brought by the plaintiffs in this case. Federal law impliedly preempts a common law claim when that "claim would conflict with, or stand as an obstacle to accomplishing the purposes" of the federal regulation. Harris v. Great Dane Trailers, Inc., 234 F.3d 398, 400 (8th Cir. 2000). In the present case, Ford has not cited any specific federal regulation that the plaintiffs' claims would conflict with or to which the claims would stand as an obstacle. Instead, Ford argues that allowing the plaintiffs' claims to move forward would "retroactively burden the relationship between NHTSA and Ford." However, the Eighth Circuit Court of Appeals has held that a product liability claim regarding alleged defects in an automobile was not impliedly preempted under NHTSA. Id. at 402. Therefore, because there is no evidence that the purpose of

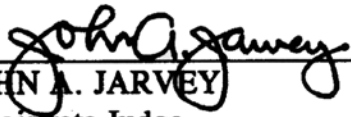
any federal regulations would be in conflict with the plaintiffs' state common law claims, the plaintiffs' claims are not impliedly preempted by federal law.

Upon the foregoing,

IT IS ORDERED

That the defendant's motion for summary judgment is denied.

April 21, 2005.



JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT